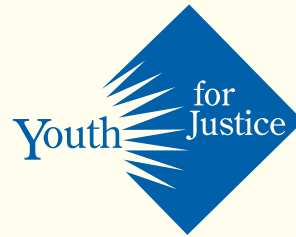


FOUNDATIONS *of* DEMOCRACY

AUTHORITY PRIVACY RESPONSIBILITY JUSTICE



HIGH SCHOOL LEVEL



2006 Youth for Justice National Teach-In

CENTER FOR CIVIC EDUCATION

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ABOUT THIS LESSON

This lesson is excerpted from the series Foundations of Democracy: Authority, Privacy, Responsibility, and Justice, high school level. "What Might Be Some Benefits and Costs of the Government Keeping a Secret?" is Lesson 8 of the Privacy concept © 2003, Center for Civic Education. All rights reserved. Permission is granted to freely reproduce and use this lesson for nonprofit, classroom use only. Copyright must be acknowledged on all copies.

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The Center may be contacted at: 5145 Douglas Fir Road, Calabasas, CA 91302.
TEL 800.350.4223, FAX 818.591.9330 cce@civiced.org www.civiced.org

Lesson 8

What Might Be Some Benefits and Costs of the Government Keeping a Secret?

Purpose of Lesson

This lesson provides an opportunity to examine the benefits and costs of allowing the federal government to keep secrets. Specifically, the lesson concerns a report on the Vietnam War which was “leaked” without authorization to reporters for the *New York Times* and the *Washington Post*. The lesson asks you to role-play a Supreme Court hearing in which the government seeks to prevent the newspapers from publishing the report.

When you have finished this lesson, you should be able to explain your position on the issue of privacy in this case. You also should be able to explain the usefulness of considering benefits and costs in evaluating, taking, and defending positions on issues of privacy.

Terms to Know

executive branch
injunction
prior restraint

Critical Thinking Exercise

EXAMINING GOVERNMENTAL PRIVACY

The following selection is based on an actual Supreme Court case, *New York Times Co. v. United States*, known as the Pentagon Papers case. Read the case carefully. After you have finished, the class will be divided into groups to evaluate the consequences of secrecy in the selection, and to engage in a simulated Supreme Court hearing on the case.

The Pentagon Papers Case

American involvement in the Vietnam War generated massive conflict in the United States. By 1967 more than 35,000 Americans had been killed or wounded or were missing in action, and many Americans publicly expressed their opposition to the war. President Johnson's commitment to increase the number of troops overseas to more than 500,000 by the middle of 1968 led to increased nationwide protests. At the 1968 Democratic National Convention thousands of anti-war protesters clashed with the Chicago police; the protests grew even larger after President Nixon took office. In December 1969, 250,000 anti-war protesters demonstrated in Washington, D.C., to oppose Nixon's plans for only a gradual withdrawal of U.S. troops, and thousands more participated in anti-war rallies around the country. Some demonstrations led to violent conflict. National Guard troops called in to maintain order at Kent State University in Ohio shot and killed four students on May 4, 1970, and on May 14, 1970, state police shot and killed two students at Jackson State College in Mississippi.

In June, 1971, *The New York Times* and the *Washington Post* obtained copies of a classified 7,000-page report entitled “History of U.S. Decision-Making Process on Vietnam Policy.” The report, which showed that the government had misled the American public about U.S. involvement in Vietnam, was leaked by Daniel Ellsberg, a former government employee, without authorization. When the newspapers began to publish excerpts from the report, the government sued for an injunction—a court order prohibiting certain conduct—to prevent further publication of the report.

The government claimed that publication of the classified report would endanger lives, undermine efforts to negotiate a peace treaty, and interfere with efforts to secure the release of prisoners of war. The government argued that the responsibility of the executive branch for the security of the nation is

so basic that the president should be granted an injunction against publication of a newspaper story whenever the information to be revealed threatens grave and irreparable injury to the public interest, regardless of how the newspaper got the information it seeks to publish.

The newspapers claimed that the First Amendment prohibits any prior restraint on the publication of news, whatever the source; that the main purpose of the First Amendment was to prohibit the widespread practice of governmental suppression of embarrassing information and to safeguard the freedom of the press to criticize and expose deception in the government. The newspapers argued that the information they sought to publish would contribute to an ongoing national debate concerning the Vietnam War; that open debate and discussion of public issues are essential to preserve our constitutional form of self-government; that secrecy in government is undemocratic and perpetuates bureaucratic errors; and that the government's concerns about the possible effects of publishing the report were unproven speculations.

Conducting a Supreme Court Hearing

Your class should be organized into three groups to conduct the following activity. One group will play the role of Supreme Court justices, one group will play the role of lawyers for the newspapers, and one group will play the role of lawyers for the government. Each of the groups should list the benefits and costs of allowing the government to maintain secrecy in the above situation by prohibiting the newspapers from publishing the secret report. The groups representing lawyers for the newspapers and for the government should prepare a brief presentation explaining why the government should or should not be permitted to keep the report secret. Use the benefits and costs you have listed in preparing your arguments. Select two or three

spokespersons to present the group's position to the Supreme Court.

While the other groups are preparing their presentations, the students representing Supreme Court justices should prepare questions to ask the spokespersons for each side, and should select a Chief Justice to conduct the hearing.

After each group has presented its position, the Supreme Court justices should discuss the arguments presented and decide whether to allow the government to keep the report secret. The justices should explain their decision in terms of the benefits and costs it will entail. The class should conclude the activity by discussing the usefulness of considering benefits and costs in taking and defending positions on issues regarding privacy and other subjects.

Using the Lesson

1. Should the government be allowed to prevent the publication of information on how to make a nuclear bomb? Research the court case of *United States v. Progressive, Inc.* and report to the class how one court dealt with this issue. Explain why you agree or disagree with the court's decision.
2. Can you think of any institution (such as a school, hospital, or government agency) that has information about you or your friends that you would not want to be made public? If so, do you approve of this example of institutional secrecy? Explain your position.

Lesson 8

What Might Be Some Benefits and Costs of the Government Keeping a Secret?

Lesson Overview

This lesson provides students with additional practice in identifying the consequences of privacy and classifying them as benefits or costs. The reading selection in the critical thinking exercise is based on the 1971 U.S. Supreme Court case *New York Times Co. v. United States*, more widely known as the “Pentagon Papers Case.” During the lesson, the class participates in a moot court to evaluate the consequences of privacy in this situation.

Lesson Objectives

At the conclusion of this lesson, students should be able to do the following:

1. examine the benefits and costs of allowing an agency of the federal government to keep secrets
2. explain the usefulness of considering benefits and costs in evaluating, taking, and defending positions on issues of privacy
3. explain why people in different positions might value benefits and costs of privacy differently

Teaching Procedures

A. Introducing the Lesson

Ask the class whether they know, or have heard, of any situation in which a government agency kept information secret from the general public. Ask students how they might decide what to do in such a situation. Explain to the class that the case they are about to read involves a similar dilemma.

While you post the “Terms to Know” on the board, have the class read “Purpose of Lesson.”

B. Critical Thinking Exercise

Examining Governmental Privacy

The critical thinking exercise, “Examining Governmental Privacy,” involves the class in role-playing a moot court hearing. The reading selection, “The Pentagon Papers Case,” describes how Daniel Ellsberg, a former government employee, gained unauthorized access to classified information regarding the conduct of the Vietnam War. When the *New York Times* began publishing excerpts from the report, the government sued for an injunction preventing further publication of the report. Have students discuss the issue and list their ideas.

After the class reads the selection, ask students to recite the facts in the dispute, identifying the object of privacy, who wants to keep the information secret, and why they want to keep it secret. Ask students to describe the way in which the government is trying to maintain the privacy. Identify the claims on the part of the newspaper as to why the government should not maintain the privacy.

Ask the class to identify the consequences of maintaining secrecy in this situation. Record their responses on the board. Some responses students might offer include:

- a. future plans for the conduct of the war would be kept from the enemy
- b. government negotiators might be able to achieve better terms during negotiations for a peace treaty
- c. revealing the information might endanger other national security interested.
- d. prohibiting the publication of the information might violate First Amendment rights of citizens
- e. without the publication, citizens could not make informed decisions about the policies of their government

Post the following roles on the board:

1. Justices of the United States Supreme Court
2. Attorneys for the New York Times Co.
3. Attorneys for the United States

If using three roles makes the groups too large and prevents students from participating in the activity, include two additional groups:

4. Attorneys to present rebuttal arguments for the New York Times Co.
5. Attorneys to present rebuttal arguments for the United States.

With the class read the directions for preparing and participating in the hearing, “Conducting a Supreme Court Hearing,” on p. 2 of the student lesson. Check students’ understanding of the instructions for preparing and participating in the activity. Divide the class into the three (or five) groups listed on the board. Allow adequate preparation time before commencing the hearing.

C. Concluding the Lesson

To conclude the lesson, have the justices of the court announce their decision and supporting reasoning to the class.

Have the class evaluate the presentations given by the groups by asking students to identify strong and weak arguments made on each side of the issue. Ask students to explain why different groups took different positions on the benefits and costs of privacy in this situation.

Some responses might include:

- a. to protect national interests
- b. to increase the availability of governmental information for citizens
- c. to uphold the rights in the First Amendment
- d. to increase the accountability of government officials

Conclude by reminding the class of the importance of considering various viewpoints in addition to their own when thinking about the benefits and costs of privacy. You may want to share with the class the Court decision in the case. If so, see Teacher Reference in the next column.

Have students re-read the “Purpose of Lesson” on p.1. Ask students to describe the extent to which they achieved the objectives of the lesson.

If students are keeping journals, have them write in their journals a summary of what they have learned about identifying the consequences of privacy and about determining the benefits and costs of privacy in a particular situation. Also ask them to explain why it is important to consider differing points of view when deciding issues of privacy.

Using the Lesson

The activities suggested in “Using the Lesson” on p. 2 are designed to help students reinforce or extend their ability to determine the consequences of privacy in a particular situation and to use the benefits and costs of those consequences to evaluate, take, and defend a position on the issue of privacy involved in that situation. Students can complete the activities by working individually or in small groups. Have students share their work with the class.

Teacher Reference

The title of the “Pentagon Papers” is *History of the U.S. Decision-Making Process on Vietnam Policy*. The 47-volume, 7,000-page history covers United States involvement in Vietnam beginning with the Truman Administration through the Johnson years. Daniel Ellsberg was an analyst for the government who helped prepare the document and who later became an anti-war activist.

New York Times Co. v. United States, 403 U.S. 713 (1971).

By a 6-3 vote, the U.S. Supreme Court ruled that the government had failed to show justification for restraining publication of the papers. Each of the nine justices wrote opinions. Justice Hugo L. Black wrote, “Both the history and language of the First Amendment support the view that the press must be left free to publish news, whatever the source, without censorship, injunctions, or prior restraints.” Justice Harry A. Blackmun wrote in his dissenting opinion, “The First Amendment ... vests in the Executive Branch primary power over the conduct of foreign affairs.... Each provision of the Constitution is important and I cannot subscribe to a doctrine of unlimited absolutism for the First Amendment at the cost of downgrading other provisions....”